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12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF LOS ANGELES**

15
16 KATHERINE MCNENNY and ADRIAN
17 RISKIN,

18 Petitioners and Plaintiffs,

19 vs.

20 LOS ANGELES CHINATOWN BUSINESS
COUNCIL, a non-profit corporation,

21
22 Respondent and Defendant.

) Case No.: BS174784

)
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT OF MOTION**
) **FOR AWARD OF ATTORNEYS' FEES**
) **AND COSTS**

) **DATE: February 5, 2020**

) **TIME: 9:30 A.M.**

) **DEPT: 86**

) **JUDGE: Hon. Mitchell L. Beckloff**
)
)

1 **I. INTRODUCTION**

2 This motion seeks an award of attorneys' fees and costs to Requesters/Petitioners¹
3 (hereinafter "Petitioners") Katherine McNenny and Adrian Riskin and their counsel in this
4 California Public Records Act ("CPRA") lawsuit. Petitioners prevailed in this action because the
5 Court entered a Judgment granting the Petition for Writ of Mandate ("Petition") which ordered
6 disclosure of previously withheld records. The CPRA contains a mandatory fee-shifting provision
7 for prevailing requester/petitioners. Cal. Gov. Code § 6259(d). Petitioners are therefore entitled to
8 recover reasonable fees and costs.

9 Petitioners are seeking reasonable fees and costs in the amount of \$51,934.11. That total
10 consists of \$33,480 for fees spent on the underlying matter; \$8,370 for a 1.25 multiplier to
11 approximate full compensation in light of contingency risk, delay of payment, and other factors the
12 Court deems appropriate; \$8,560 in "fees on fees"; and \$1,524.11 in costs.

13 Respondent has declined to engage in settlement negotiations—and, indeed, to engage in
14 this litigation entirely—leaving Petitioners no choice but to seek fees via this motion.

15 **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

16 Petitioners filed this action in August 2018 to induce lawful production of public records in
17 response to various CPRA requests to which Respondent refused to respond. This action proceeded
18 to hearing on the Petition for Writ of Mandate on July 24, 2019, at which time the Court issued an
19 order granting the Petition. On August 19, 2019, the Court issued its Judgment Granting Petition for
20 Writ of Mandate. The Court found that Respondent had admitted² that "all of the records that
21 Petitioners requested are not properly subject to any of the exemptions under California
22 Government Code § 6254," and that Respondent has not "justified withholding the requested CPRA
23 documents by asserting that any exemption applies." Order Granting Petition for Writ of Mandate
24 ("Order") at 3. The Court therefore ordered disclosure of all Petitioners' requested records, which
25 Respondent had unlawfully withheld. *Id.*

26 _____
27 ¹ The term "Requester/Petitioner" rather than simply "Plaintiff" is used herein in accordance with recently enacted
28 legislation, 2018 Cal. Legis. Serv. Ch. 463 (S.B. 1244), which amended Cal. Gov. Code § 6259(d) to clarify that the
person requesting records (the requester, not the agency) is the party entitled to recover fees under section 6259(d).

² Respondent was deemed to have made this admission pursuant to Petitioners' motion for truth of matters in requests
for admission to be deemed admitted, which the Court granted on July 3, 2019.

1 Petitioners served the Notice of Entry of Judgment on Respondent on August 22, 2019.
2 Petitioners thereafter attempted to resolve Respondent's fee liability via settlement offer,
3 communicated via U.S. mail, email, and telephone. *See* von Herrmann Decl. at ¶ 10. In keeping
4 with its continued disregard of this litigation, Respondent has provided no response whatsoever to
5 Petitioners' efforts to engage in settlement negotiations. *Id.*

6 **III. ARGUMENT**

7 **A. Petitioners prevailed and are entitled to fees because the action resulted in the** 8 **disclosure of previously withheld records.**

9 Petitioners prevailed in this action and are entitled to recover attorneys' fees. The CPRA
10 contains a mandatory fee-shifting provision for prevailing requesters/petitioners. Cal. Gov. Code
11 § 6259(d) ("The court shall award court costs and reasonable attorney's fees to the requester should
12 the requester prevail in litigation."). The use of the word "shall" communicates that a court is
13 required to award fees and costs to a prevailing requester/petitioner. *Belth v. Garamendi* (1991) 232
14 Cal. App. 3d 896, 899-901; *see also Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 427 ("An
15 award of costs and attorney fees pursuant to this provision is *mandatory* if the plaintiff prevails.")
16 (emphasis added). The purpose of the CPRA's fee-shifting provision is to provide "*protections and*
17 *incentives* for members of the public to seek judicial enforcement of their right to inspect public
18 records subject to disclosure." *Filarsky, supra*, at 427 (emphasis added).

19 A requester/petitioner prevails within the meaning of the CPRA when, *inter alia*, they file an
20 action that results in the respondent being ordered to release a previously withheld document.
21 *Sukumar v. City of San Diego* (2017) 14 Cal. App. 5th 451, 454, quoting *Belth, supra*, at 898.

22 A requester/petitioner also prevails and is entitled to fees when it shows the agency denied
23 access to records by failing to conduct an adequate search. *Community Youth Athletic Center v. City*
24 *of National City* (2013) 220 Cal. App. 4th 1385, 1447 (requester/petitioner eligible to be prevailing
25 party by showing agency failed to conduct an adequate search in violation of the CPRA, even where
26 no additional record disclosed).

27 Notably, an agency cannot escape liability to the prevailing requester/petitioner by citing
28 internal logistical problems or general neglect of duties. *Id.*

1 Here, Petitioners are the prevailing party because both (1) the lawsuit resulted in the ordered
2 disclosure of previously withheld records, and (2) Respondent has admitted that it violated the
3 CPRA by failing to conduct an adequate search for records. The Court stated in its Order that
4 Respondent has not “justified withholding the requested CPRA documents by asserting that any
5 exemption applies” and therefore ordered that Respondent produce all requested records. Order at 3.
6 The Court also deemed that Respondent admitted that it “failed to conduct a reasonable search for
7 the records that Petitioners requested.” Petitioners’ Requests for Admission (Set One) at 4.

8 Thus, Petitioners have clearly prevailed in their CPRA action. Their lawsuit resulted in the
9 ordered disclosure of previously withheld records and established that Respondent did not conduct a
10 legally adequate search. Petitioners are entitled to reasonable attorneys’ fees and costs under Cal.
11 Gov. Code § 6259(d).

12 **B. The fees sought are reasonable.**

13 The fees Petitioners seek are reasonable. To determine reasonable attorneys’ fees for
14 prevailing CPRA requesters/petitioners, courts begin by calculating the “lodestar” amount—the
15 number of hours reasonably expended multiplied by the reasonable hourly rate. *Bernardi v. County*
16 *of Monterey* (2008) 167 Cal. App. 4th 1379, 1393 (affirming award of \$244,267 to the petitioner).
17 Attorney fee awards should be “fully compensatory” and, in the absence of circumstances rendering
18 an award unjust, an attorney fee award should ordinarily include compensation for all of the hours
19 reasonably spent. *Id.* at 1394. Once the lodestar amount is established, courts can apply a lodestar
20 enhancement—or “multiplier”—for factors such as contingent risk to ensure the award
21 approximates market-level compensation for such services, which typically includes a premium for
22 the risk of nonpayment or delay in payment of attorneys’ fees. *Id.* at 1399.

23 Here, Petitioners seek a lodestar amount of \$33,480 for work performed prior to the fee
24 motion,³ a multiplier of 1.25 resulting in an additional \$8,370, \$8,560 for time spent on the fee
25 motion,⁴ and costs in the amount of \$1,524.11, for a total award of \$51,934.11.

26 1. Petitioners’ expended hours are reasonable.

27
28 ³ This calculation includes 82.2 attorney hours at a \$400 hourly rate and 2 travel hours at a \$300 hourly rate.

⁴ This calculation includes 19.9 attorney hours at a \$400 hourly rate and 2 travel hours at a \$300 hourly rate.

1 Petitioners are entitled to compensation for all time spent on this case. Compensable time
2 includes all hours reasonably spent on a case. *Serrano v. Unruh* (1982) 32. Cal.3d 621, 639
3 (“*Serrano IV*”). “By and large, the court should defer to the winning lawyer’s professional judgment
4 as to how much time he was required to spend on the case; after all, he won, and might not have,
5 had he been more of a slacker.” *Kerkeles v. City of San Jose*, (2015) 243 Cal.App.4th 88, 104
6 (quoting *Moreno v. City of Sacramento* (9th Cir. 2008) 534 F3d 1106, 1112). “It must also be kept
7 in mind that lawyers are not likely to spend unnecessary time on contingency fee cases in the hope
8 of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee.”
9 *Id.* (quoting *Moreno, supra*, at 1112). Further, in determining the amount of reasonable fees, the
10 time required by the opposing party’s tactics can be highly probative. *Serrano IV, supra*, at 634
11 fn18.

12 Here, the hours set forth in the declarations of Anna von Herrmann, Abenicio Cisneros, and
13 Joseph Wangler are reasonable. All drafting, filing, legal research, communication, and other time
14 incurred was directly related to the issue of Respondent’s refusal to release records responsive to
15 Petitioners’ CPRA requests. von Herrmann Decl. at Exh. B; Cisneros Decl. at Exh. A; Wangler
16 Decl. at ¶¶ 4-6. Respondent has refused to engage even nominally in litigation, requiring Petitioners
17 to fully litigate the case to completion rather than resolving the case through settlement. von
18 Herrmann Decl. at ¶¶ 8-9. Petitioners have therefore been forced to expend considerable time on the
19 case which could have otherwise been avoided had Respondent participated in the case. For
20 example, Respondent’s refusal to respond to Petitioners’ CPRA requests required Petitioners to
21 initiate litigation and to conduct factual research to prove the existence of certain records. *Id.* at ¶ 9.
22 Respondent ignored Petitioners’ various attempts to discuss the case after it was filed, forcing
23 Petitioners to prepare and serve discovery—which ultimately required a motion to compel—in
24 order to obtain necessary information that could have been received informally. *Id.* Respondent’s
25 refusal to engage even nominally in settlement negotiations in spite of Petitioners’ repeated attempts
26 to discuss settlement required Petitioners to fully litigate this case, including drafting briefs and
27 motions, attending various hearings, and preparing a motion for attorneys’ fees and costs. *Id.* Even
28 after Petitioners received a favorable order from the Court on the merits of the case, Respondent has

1 failed to comply with the Court’s order, forcing Petitioners to expend additional hours attempting to
2 induce Respondent to produce the records as required and, ultimately, to pursue a forthcoming *ex*
3 *parte* application for an order to show cause re: contempt. *Id.* In short, Respondent’s obstructive
4 tactics directly resulted in Petitioners’ increased attorney hours in in this action.

5 Petitioner’s counsel also proceeded conscientiously to ensure all hours were reasonable.
6 Counsel did not send multiple attorneys to hearings or engage in regular or lengthy meetings. *See*
7 von Herrmann Decl. at Exh. B. All attorneys for Petitioners exercised billing judgement as they
8 recorded their time. von Herrmann Decl. at ¶ 12; Cisneros Decl. at ¶ 10; Wangler Decl. at ¶ 3. Mr.
9 Wangler, who attended all in-person hearings in this matter, is seeking compensation for travel time
10 at a 25% reduced rate. Wangler Decl. at ¶ 6. In total, the attorneys in this case have reduced their
11 time prior to the fee motion by an additional 8.3 hours, or 9 percent, as billing judgment. The 84.2
12 total hours being sought on this matter⁵ are reasonable.

13 Additionally, the time sought for “fees on fees” are also reasonable. Petitioners are
14 proceeding via this motion because Respondent declined to engage in settlement discussions
15 regarding fees, despite Petitioners’ repeated attempts to resolve Respondent’s fee liability via
16 settlement. von Herrmann Decl. at ¶ 10. Petitioners’ claim for “fees on fees” is based on the 16.9
17 hours incurred to date preparing this motion (14 hours from Ms. von Herrmann; 1.6 hours from Mr.
18 Cisneros; and 1.3 hours from Mr. Wangler), as well as an additional 6 hours contemplated for the
19 reply brief, if necessary, and hearing. von Herrmann Decl. at ¶ 13; Cisneros Decl. at ¶ 10; Wangler
20 Decl. at ¶ 6. The time is documented and reasonable.

21 2. The hourly rates sought by Petitioners are reasonable.

22 The hourly rates sought by Petitioners’ counsel are reasonable. The reasonable market value
23 of an attorney’s service is the measure of the reasonable hourly rate. *Ketchum v. Moses* (2001) 24
24 Cal.4th 1122, 1132. This standard applies regardless of whether the attorneys claiming fees charge
25 nothing for their services, charge at below-market rate or discounted rates, represent the client on a
26 straight contingent fee basis, or are in-house counsel. *Chacon v. Litke* (2010) 181 Cal. App. 4th
27 1234, 1260 (internal citations omitted). As detailed in their declarations, all three attorneys in this
28

⁵ Not including time spent on the fee motion.

1 case seek an hourly rate of \$400. von Herrmann Decl. at ¶ 11; Cisneros Decl. at ¶ 9; Wangler Decl.
2 at ¶ 6.

3 The rate Ms. von Herrmann seeks is reasonable. Ms. von Herrmann graduated from the
4 University of California, Davis School of Law in 2014, graduating in the top five percent of her
5 class and as a member of the Order of the Coif. von Herrmann Decl. at ¶ 2. She is a solo practitioner
6 whose practice focuses on CPRA litigation. *Id.* at ¶ 3. Ms. von Herrmann has filed CPRA cases for
7 clients throughout California, including in Alameda, Los Angeles, Marin, Orange, Sacramento, and
8 Yolo counties. *Id.* An hourly rate of \$400 is “well within the range of reasonable rates in the Los
9 Angeles legal market for attorneys with five years of practice who are of comparable skill,
10 experience, and reputation.” Sobel Declaration at ¶ 22. Thus, the amount is reasonable. *Id.*

11 The rate Mr. Cisneros seeks is also reasonable. Mr. Cisneros is a 2014 law graduate from the
12 University of California, Davis School of Law. Cisneros Decl. at ¶ 2. His solo practice focuses
13 nearly entirely on California Public Records Act cases. *Id.* at ¶ 3. Since 2017, Mr. Cisneros has
14 represented clients in over 20 CPRA actions in jurisdictions across the state. *Id.* In addition to
15 representing clients in CPRA actions, Mr. Cisneros authored a guide to the CPRA for plaintiffs’
16 attorneys which was published in Trial Lawyer Magazine and Valley Lawyer Magazine, and he has
17 conducted CPRA trainings for organizations across the state. *Id.* at ¶ 4. An hourly rate of \$400 is
18 “well within the range of reasonable rates in the Los Angeles legal market for attorneys with five
19 years of practice who are of comparable skill, experience, and reputation.” Sobel Declaration at
20 ¶ 22. Thus, the amount is reasonable. *Id.*

21 The rate Mr. Wangler seeks is also reasonable. Mr. Wangler, who served as local counsel in
22 this case, graduated Magna Cum Laude from the University of La Verne College of Law and has
23 been licensed to practice law in California since 2014. Wangler Decl. at ¶ 2. He has five years of
24 experience in civil litigation, including litigation to enforce the CPRA. *Id.* An hourly rate of \$400 is
25 “well within the range of reasonable rates in the Los Angeles legal market for attorneys with five
26 years of practice who are of comparable skill, experience, and reputation.” Sobel Declaration at
27 ¶ 22. Thus, the amount is reasonable. *Id.*

28 In sum, the hourly rates sought by Petitioners’ counsel are reasonable.

1 3. A 1.25 multiplier is necessary to approximate market compensation.

2 Given public policy in favor of CPRA enforcement, a 1.25 multiplier is appropriate and
3 necessary to account for contingency risk and delay of payment in order to approximate market
4 rates. While the lodestar is the basic fee for comparable legal services in the community, it may be
5 adjusted by the court based on factors including the contingent nature of the fee award. *Bernardi v.*
6 *County of Monterey* (2008) 167 Cal.App.4th 1379, 1399, *citing Ketchum, supra*, at 1132. A
7 multiplier for contingent risk is “one of the most common” multipliers utilized by courts. *Graham v.*
8 *DaimlerChrysler Corp.* (2004) 34 Cal.4th 533, 579. The purpose of the multiplier for contingency
9 risk is to bring the financial incentives for attorneys enforcing important rights into line with
10 incentives attorneys have to undertake claims for which they are paid on a fee-for-services basis.
11 *Ketchum, supra*, at 1132. Thus, the multiplier is intended to approximate “market level
12 compensation” for contingency cases enforcing statutory and constitutional rights, which typically
13 includes a premium for the risk of nonpayment or delay in payment of attorneys’ fees. *Bernardi,*
14 *supra*, at 1399. The Sixth District Court of Appeal approved of a “modest” 1.25 multiplier for
15 contingency risk in a CPRA case. *Id.*

16 As such, a multiplier is not a “windfall,” but a mechanism to incentivize contingency
17 representation in CPRA cases. This case is precisely the type for which a multiplier is appropriate.
18 Petitioners’ counsel took this case entirely on a contingency basis for attorneys’ fees. von Herrmann
19 Decl. at ¶ 14; Cisneros Decl. at ¶ 8; Wangler Decl. at ¶ 4. Petitioners’ counsel also shared
20 responsibility for costs. von Herrmann Decl. at ¶ 14. The CPRA is an important public right, and the
21 Legislature has created a fee-shifting provision in order to encourage enforcement. *Filarsky, supra*,
22 28 Cal.4th at 426-427. Despite the fact that fees are mandatory should requesters prevail, there is
23 significant risk of not prevailing in any given CPRA case because the requester has incomplete
24 information compared to the agency; whereas the agency knows the content of each record it is
25 withholding, the requester typically does not. This is particularly true in cases such as this one
26 where the agency refuses to communicate its reasons for withholding the requested records, making
27 it difficult to fully assess whether any of the requested records may be arguably exempt from
28 disclosure.

1 Without a multiplier in CPRA cases taken on contingency, attorneys are required to take
2 CPRA cases at a “risk discount.” Further, the nature of contingency representation means that
3 attorneys must often wait a year or more for any compensation; here, payment for Petitioners’
4 attorneys will have been delayed approximately one year and seven months by the time the present
5 motion for fees and costs is heard by the Court.⁶ A contingency attorney may also go out of pocket
6 for costs in the meantime, as Petitioners’ counsel has done here. Given those factors, declining to
7 grant a multiplier in contingency CPRA cases undermines the statutory scheme meant to provide
8 incentives to attorneys to represent members of the public to enforce the right to public records,
9 regardless of the client’s ability to pay.

10 All three attorneys in this case have to date only filed CPRA cases on contingency for fees.
11 von Herrmann Decl. at ¶ 5; Cisneros Decl. at ¶ 5; Wangler Decl. at ¶ 2. That practice has permitted
12 them to represent students, independent journalists, public interest attorneys, and community
13 activists who were wrongfully denied public records but who did not have the ability to pay upfront
14 to litigate. von Herrmann Decl. at ¶ 5; Cisneros Decl. at ¶ 5. As discussed above, there is inherent
15 risk in every CPRA case, particularly where an agency refuses to communicate its alleged
16 justification for withholding records. Thus, the CPRA attorney taking cases on contingency—as
17 counsel has done here—is assisting members of the public in vindicating important statutory and
18 constitutional rights regardless of the client’s ability to pay. The CPRA attorney working on
19 contingency may invest hundreds of hours, may wait a year or more for compensation, and can face
20 an unknown amount of risk as to whether the client will prevail. Given those circumstances, where,
21 as here, the requester does prevail, a “modest” 1.25 multiplier is appropriate to incentivize
22 contingency CPRA representation and to approximate market compensation when accounting for
23 the risk discount and delay of payment. *Bernardi, supra*, at 1399.

24 **C. Costs Should be Awarded.**

25 Petitioners submitted a Memorandum of Costs in the amount of \$1,524.11. Respondent did
26


27 ⁶ If Respondent’s actions up to this point are any indication of its future conduct, Petitioners are also very likely to be
28 forced to pursue additional legal action to collect any fees and costs ultimately ordered by the Court, causing even
further delay in payment. Although the Court ordered Respondent to pay sanctions arising out of Petitioners’ motion to
compel by September 23, 2019, Respondent has to date refused to do so. von Herrmann Decl. at ¶¶ 8-9.

1 not file a Motion to Tax Costs. Those costs are reasonable and documented and should be awarded.

2 **IV. CONCLUSION**

3 The CPRA's fee provision is a primary "protection[]" and incentive[]"for
4 requester/petitioners, designed to encourage private enforcement of the "fundamental and necessary
5 right of every person in this state" to public records. *Filarsky, supra*, 28 Cal.4th at 426-427; Cal.
6 Gov. Code § 6250. Petitioners were forced to file this lawsuit to obtain documents that were
7 unlawfully withheld and to force Respondent to conduct an adequate search for records. Petitioners
8 were forced to file this motion to recover fees as Respondent declined to negotiate an agreement.
9 Respondent has continuously demonstrated its contempt for the CPRA, the public's right to
10 transparency in public business, and the Court's authority, increasing Petitioners' expended hours in
11 this case and forcing the utilization of finite judicial resources. Petitioners are entitled to recover
12 fees. This motion should be granted.

13
14 Dated: October 16, 2019

By: 
Anna von Herrmann
Attorney for Petitioners and Plaintiffs